



# California Fair Political Practices Commission

April 17, 1987

Furman Roberts  
City Attorney  
Orange Civic Center  
300 East Chapman Avenue  
Orange, CA 92666

Re: Your Request for Advice  
Our File No. A-87-093

Dear Mr. Roberts:

You have requested advice on behalf of Fred L. Barrera, a member of the Orange City Council, concerning his duties under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> When we spoke on the telephone, I advised you that Section 1090 also may affect Councilmember Barrera's ability to approve the award of certain construction contracts. The Commission cannot provide advice concerning laws such as Section 1090, which are not part of the Act. You indicated in your letter that you will discuss Section 1090 with Councilmember Barrera.

## QUESTION

Does the Act prohibit Councilmember Barrera from participating in decisions to award construction contracts when the bidders include a corporation owned by his adult son? Councilmember Barrera has no investment in the corporation and receives no income from either the corporation or his son.

## CONCLUSION

Under the Act, Councilmember Barrera may participate in decisions to award construction contracts when the bidders include a corporation owned by his adult son.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a)-(e).

You have informed us that Councilmember Barrera's son has provided assistance to Councilmember Barrera's campaign for city council. However, Councilmember Barrera has no investment interest in his son's corporation and receives no income from his son or the corporation. Based on these facts, we conclude that Councilmember Barrera does not have a financial interest in decisions to award construction contracts when his son's corporation is one of the bidders.

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Under the facts you have provided, Councilmember Barrera holds no economic interests of the type set forth in Section 87103 which would be affected by the construction contract decisions. The decisions also would not affect a member of Councilmember Barrera's "immediate family" as that term is defined in the Act.<sup>2/</sup> Finally, the son's involvement in his father's city council campaign does not create a basis for a conflict of interest under the Act. (See Section 82030(b)(1); Regulation 18215(d).)

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

*Kathryn E. Donovan*

By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:plh

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<sup>2/</sup> Section 82029 defines an official's "immediate family" as his spouse and dependent children.

87-093

# city of orange



incorporated 1888

MAR 23 orange civic center • 300 east chapman avenue • orange, california 92666  
post office box 449

city attorney  
(714) 532-0351

March 11, 1987

Kathryn Donovan  
Fair Political Practices Commission  
1100 "K" Street  
Sacramento, CA 95814

Re: Councilman Fred Barrera - Conflict of Interest  
Adult Son of Councilman Working on Reelection  
Campaign Committee

Dear Ms. Donovan:

As you recall I recently talked with you by telephone concerning the question presented by the following circumstances:

Councilman Fred L. Barrera has several adult children. One adult son has his own corporation organized for the purpose of bidding for and performing construction work. Councilman Barrera has no financial interest in, or any business arrangement with, this corporation owned and operated by his adult son. Other than their familial relationship, the only public service the son performs for his Councilman father is to assist his father when he campaigns for City Council Office. Other than whatever incidental money and volunteer service his son may contribute to his father's City Council campaign, there is no financial relationship between the son and his corporation and Councilman Barrera.

Based on this factual situation and further based upon the assurance that there is not now, nor has there ever been, any co-mingling of any of the campaign funds with the personal funds of Councilman Barrera, it is my understanding that the Commission staff would find no conflict of interest within the meaning of Sections 87100 et seq. of the Government Code. There appears to be no prohibition against the Councilman's son or his corporation filing bids and seeking a construction contract with either the City or the Redevelopment Agency of the City insofar as Sections 87100 et seq.

are concerned. As I understood our conversation, should Councilman Barrera determine to vote to approve the awarding of a contract between the son's construction company and the City or the City's Redevelopment Agency, there would appear to be no participation by Councilman Barrera in any decision of the City in which he knows or has reason to know he has a financial interest within the meaning of Sections 87100 et seq.

As I have indicated to you, Councilman Barrera has assured me that no monies ever received by his campaign committee is co-mingled with his own personal income or assets, therefore, in no way is his son's activity on his behalf during any campaign for election to the City Council represent any income or source of money to Councilman Barrera personally.

You have further explained to me that the Fair Political Practices Commission does not analyze Sections 1090 et seq. of the Government Code relating to prohibitions against any member of a City Council being financially interested in any contract made by him in his official capacity. However, I have indicated that I would examine this provision with Councilman Barrera and would refer to him and his son any tentative conclusion I reached concerning my interpretation of Sections 1090 et seq. and further request that his son receive confirmation from his own personal attorney concerning the proper interpretation of Sections 1090 et seq.

In any event, I would request that you confirm this interpretation of Sections 87100 et seq. by returning a copy of this letter to me or by sending your own letter to me setting forth your analysis of the conclusions I have proposed regarding Sections 87100 et seq. of the Government Code. These provisions, as part of the Initiative known familiarly as the Political Reform Act would not prohibit the construction firm owned and operated by the Councilman's son from bidding upon, or receiving an award of, a construction contract with the City or the City's Redevelopment Agency.

Thank you for your analysis of this problem.

Very truly yours,

  
Furman B. Roberts  
City Attorney

FBR:ajr  
cc: Councilman Barrera  
Barrera and Company



# California Fair Political Practices Commission

March 24, 1987

Furman B. Roberts  
City Attorney  
P.O. Box 449  
Orange, CA 92666

Re: 87-093

Dear Mr. Roberts:

Your letter requesting advice under the Political Reform Act was received on March 23, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn E. Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh  
cc: Fred Barrera